Supreme Court, U.S.
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No. 03 555 OCT 14 2003

In The

Supreme Court of the United States

ARTHUR MYERS,

Petitioner,

v.

CITY OF NORTH MIAMI and
INTEGRATED INS. CO.,

Respondents.

**On Petition For A Writ Of Certiorari
To The Florida First District Court Of Appeal**

PETITION FOR A WRIT OF CERTIORARI

RICHARD A. SICKING
Florida Bar No. 073747
1313 Ponce de Leon Blvd., Suite 300
Coral Gables, Florida 33134
Telephone: 305-446-3700
Facsimile: 305-446-4014

32 pp

QUESTIONS PRESENTED FOR REVIEW

Whether the Supreme Court of the United States should exercise its jurisdiction to review a decision of a Florida District Court of Appeal declaring valid a state statute, which eliminated a workers' compensation benefit on account of the receipt of federal social security benefits, when:

Question One: (A) The Supreme Court of the United States has declared unconstitutional on supremacy grounds, a provision in a state workers' compensation law which reduced workers' compensation on account of the receipt of benefits under federal law, when there was no specific authorization by Congress to the states for such reduction. *Rose v. Arkansas State Police*, 479 U.S. 1, 93 L. Ed. 2d 183, 107 S. Ct. 334 (1986).

(B) The 1965 authorization by Congress to the states to reduce workers' compensation on account of the receipt of social security disability was withdrawn by Congress as of February 18, 1981. Pub. L. No. 97-35, sec. 2208(6) (1981); 42 U.S.C. § 424a(d) (1981).

(C) The Social Security Administration adopted 20 C.F.R. § 404.408(b), providing that state laws reducing workers' compensation on account of the receipt of social security actually had to have been in effect on February 18, 1981, and that the federal government would not recognize any change in state law after that date.

(D) This Florida statute was not enacted until 1990.

QUESTIONS PRESENTED FOR REVIEW – Continued

Question Two: The highest courts of three states have invalidated workers' compensation statutes which reduce permanent total disability benefits on account of the receipt of social security old age retirement, on equal protection grounds, although other states' highest courts take a contrary view.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW	i
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	v
CITATIONS OF OFFICIAL AND UNOFFICIAL REPORTS OF THE OPINIONS ENTERED IN THIS CASE	1
CONCISE STATEMENT OF THE BASIS OF THIS COURT'S JURISDICTION	1
CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS INVOLVED IN THIS CASE	4
CONCISE STATEMENT OF THE CASE	4
CONCISE STATEMENT OF THE FACTS	5
ARGUMENT	6
QUESTION ONE	6
QUESTION TWO	9
CONCLUSION	9
APPENDIX TABLE OF CONTENTS	i
APPENDIX	
Opinion Of Florida First District Court Of Appeal	App. 1
Order Of Supreme Court of Florida Denying Review	App. 11
20 C.F.R. § 404.408(b)	App. 13

TABLE OF AUTHORITIES

Page

CASES

City of Clearwater v. Acker, 755 So. 2d 597 (Fla. 1999) 5

Free v. Bland, 369 U.S. 663, 8 L. Ed. 2d 180, 82 S. Ct. 1089 (1962) 8

Gibbons v. Ogden, 9 Wheat. 1, 6 L. Ed. 23 (1824) 8

Golden v. Westark Community College, 969 S.W. 2d 154 (Ark. 1998) 9

Harrell v. Florida Construction, et al., and *Arthur Myers v. City of North Miami, et al.*, 834 So. 2d 352 (Fla. 1st DCA 2003), *review denied, Harrell, et al. v. Florida Construction Specialists, et al.*, 851 So. 2d 728 (Fla. 2003) 1

Harris v. State of Washington Dept. of Labor, 842 P. 2d 1056 (Wash. 1993) 9

Indus. Claim Appeals Office v. Romero, 912 P. 2d 62 (Colo. 1996) 9

McDowell v. Jackson Energy RECC, 84 S.W. 3rd 71 (Ky. 2002) 9

Rose v. Arkansas State Police, 479 U.S. 1, 93 L. Ed. 2d 183, 107 S. Ct. 334 (1986) 2, 8

State ex rel. Boan v. Richardson, 482 S.E. 2d 162 (W. Va. 1996) 9

Texas Employers' Ins. Assoc. v. U. S., 569 F. 2d 874 (5th Cir. [Texas] 1978), *cert. denied*, 439 U.S. 826, 58 L. Ed. 2d 119, 99 S. Ct. 98 (1978) 8

Wilkins v. Broward County School Board, 754 So. 2d 50 (Fla. 1st DCA 2000) 6

TABLE OF AUTHORITIES – Continued

Page

CONSTITUTION

Art. VI, cl. 2, U.S. Const. ..... *passim*

Amend. XIV, § 1, U.S. Const. 4

STATUTES

§ 440.15(1)(e), Fla. Stat. 1

§ 440.15(1)(e), Fla. Stat. (1991) 4, 6

§ 440.15(1)(f), Fla. Stat. 5, 6

§ 440.15(1)(f)1, Fla. Stat. 1, 2, 6, 8

Ch. 90-201, § 20, Laws of Fla. 6, 8

Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, Sec. 2208(6) (1981) 6

28 U.S.C. § 1257(a) 3

42 U.S.C. § 402 5

42 U.S.C. § 423 5

42 U.S.C. § 424a 7

42 U.S.C. § 424a(a) 6

42 U.S.C. § 424a(d) 4, 6

42 U.S.C. § 424a(d) (1981) 7

RULE

20 C.F.R. § 404.408(b) 2, 4, 7

TABLE OF AUTHORITIES – Continued

Page

MISCELLANEOUS

Vol. 9, *Larson's Workers' Compensation Law*, § 157.03(5)(a), p. 157-18 (2000)..... 7

CITATIONS OF OFFICIAL AND UNOFFICIAL REPORTS OF THE OPINIONS ENTERED IN THIS CASE

Arthur Myers v. City of North Miami, OJCC Nos. 91-000397MIA, 92-001239MIA, Order of Judge of Compensation Claims Kathryn S. Pecko, dated January 16, 2002 (unpublished decision).

Harrell v. Florida Construction, et al., and *Arthur Myers v. City of North Miami, et al.*, 834 So. 2d 352 (Fla. 1st DCA 2003).

Harrell, et al. v. Florida Construction Specialists, et al., 851 So. 2d 728 (Fla. 2003).

CONCISE STATEMENT OF THE BASIS OF THIS COURT'S JURISDICTION

The Florida First District Court of Appeal held that § 440.15(1)(f)1, Fla. Stat., formerly § 440.15(1)(e), Fla. Stat., was constitutionally valid against the argument that this statute violated the Supremacy Clause of the U.S. Constitution and the equal protection guarantees of the federal and state constitutions. The Supreme Court of Florida declined to accept jurisdiction to review on July 16, 2003.

In 1965, the Congress authorized the states, as a state option, to reduce workers' compensation on account of the receipt of social security disability benefits. In 1981, Congress withdrew this authorization, but grandfathered the approximately one third of the states (like Florida) that had exercised the state option by enacting such legislation; thereby making it totally illegal in two thirds of the states for the state legislature to enact such legislation. The states

that had exercised the state option were allowed to keep what they had already enacted, but were not authorized to change such laws, both by the terms of the Congressional amendment and the subsequent regulation of the Social Security Administration contained in the Code of Federal Regulations. Nine years later, in 1990, Florida adopted what is now § 440.15(1)(f)1, Fla. Stat., which provides that those employees who are receiving workers' compensation permanent total disability, who received social security total disability, and who would be eligible to receive social security old age retirement after age 62, are no longer entitled to the workers' compensation cost of living adjustment.

The Supreme Court of the United States held in *Rose v. Arkansas State Police*, 479 U.S. 1, 93 L. Ed. 2d 183, 107 S. Ct. 334 (1986), that the states could not reduce workers' compensation on account of the receipt of benefits under federal law without specific authorization from Congress to do so.

The Code of Federal Regulations specifically provides that the federal government will not recognize any state law change in the reduction of workers' compensation on account of the receipt of social security disability after February 18, 1981. 20 C.F.R. § 404.408(b).

The Supremacy Clause of the federal constitution provides that the laws of the United States are the supreme law of the land. This also includes the rules and regulations of federal agencies. The Florida statute was passed nine years after Congress withdrew authorization to the states to enact such legislation. Therefore, it violates the Supremacy Clause.

The United States Constitution guarantees equal protection of the laws. Using the rational basis test, it is totally unreasonable to take away a cost of living adjustment from those persons who are injured at work resulting in permanent total disability (blindness, paralysis, amputation, etc.) so that they would revert to their original workers' compensation rate from years before, when they reach age 62, just because they are eligible for a social security early (reduced), old age retirement.

The Supreme Courts of Colorado, Arkansas and West Virginia have already held that laws, which reduce workers' compensation payments to those who are permanently totally disabled on account of the receipt of social security old age retirement benefits, violate the equal protection, guarantees of the federal constitution. However, the Florida First District Court of Appeal held that such laws do not violate equal protection guarantees. There is a wide divergence in the courts of last resort of the various states on this point, including Kentucky and Washington, which hold the same as Florida.

For these reasons, it would be most appropriate for the Supreme Court of the United States to consider the issues involved pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS INVOLVED IN THIS CASE

Art. VI, cl. 2, U.S. Const.; Amend. XIV, § 1, U.S. Const.; 42 U.S.C. § 424a(d); 20 C.F.R. § 404.408(b); § 440.15(1)(e), Fla. Stat. (1991).

CONCISE STATEMENT OF THE CASE

The petitioner, Arthur Myers, was the appellant below before the Florida First District Court of Appeal. The respondents were his employer, the City of North Miami, Florida, and its workers' compensation insurance carrier, Integrated Insurance Company.

Myers claimed the continuation of the workers' compensation cost of living adjustment (COLA) for permanent total disability, which he had been receiving. The employer/carrier had discontinued this benefit after age 65. The Judge of Compensation Claims denied this claim based on § 440.15(1)(e), Fla. Stat. (1991).

Myers appealed, challenging the constitutional validity of the statute. (The Judge of Compensation Claims did not have jurisdiction on this issue.)

In an opinion of January 8, 2003, the Florida First District Court of Appeal expressly declared that the statute was constitutionally valid in that it did not violate the Supremacy Clause of the U.S. Constitution or the equal protection guarantees of the state and federal constitutions.

Myers sought review in the Supreme Court of Florida, which declined to accept jurisdiction, 5 to 2, by order dated July 16, 2003.

CONCISE STATEMENT OF THE FACTS

Myers was injured in his employment on March 22, 1991, and January 21, 1992, and rendered permanently and totally disabled from all work. He received social security total disability. He received workers' compensation permanent total disability based on the compensation rate in force on his last date of accident. In addition, he received a cost of living adjustment amounting to 5% of his own compensation rate for each year since his accident, but not exceeding the maximum rate for the year of payment. § 440.15(1)(f), Fla. Stat. Although called a "supplemental benefit" in the statute, it is a cost of living adjustment (COLA). *City of Clearwater v. Acker,* 755 So. 2d 597 (Fla. 1999).

When Myers reached age 65, his COLA was discontinued, although his social security old age benefit, after age 65, was the same amount as his social security disability benefit had been.

The employer/carrier relied on a Florida statute, which provides:

> Entitlement to these supplemental payments shall cease at age 62 if the employee is eligible for social security benefits under 42 U.S.C. ss. 402 and 423, whether or not the employee has applied for such benefits.

§ 440.15(1)(f)1, Fla. Stat.; formerly § 440.15(1)(e), Fla. Stat. (1991).

This statute was first enacted in 1990. Ch. 90-201, § 20, Laws of Fla.

In *Wilkins v. Broward County School Bd.*, 754 So. 2d 50 (Fla. 1st DCA 2000), the Florida First District Court of Appeal held that this statute applied to anyone who received social security total disability and workers' compensation permanent total disability, who was eligible for social security old age retirement after age 62.

ARGUMENT

Question One

In 1965, Congress created the social security offset by which social security disability benefits were reduced on account of the receipt of workers' compensation, according to a formula, until age 62. 42 U.S.C. § 424a(a). At the same time, Congress created an exception, by authorizing the states to reverse the offset, as an option, to reduce workers' compensation on account of the receipt of social security disability. 2 U.S.C. § 424a(d).

Florida enacted such a law in 1974, providing for workers' compensation to be reduced on account of the receipt of social security disability, according to a formula, until age 62, but never more than what the federal government would have deducted. § 440.15(1)(f), Fla. Stat.; formerly § 440.15(1)(e), Fla. Stat. (1991).

In the Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 9735, Sec. 2208(6) (1981), Congress amended

42 U.S.C. § 424a in two ways: (1) to increase from 62 to 65 the years during which the Social Security Administration could reduce social security disability on account of the receipt of workers' compensation; and (2) to withdraw the authorization to the states to reduce workers' compensation on account of the receipt of social security disability. However, Congress grandfathered the states that had already enacted such laws, but only as to state laws enacted prior to February 18, 1981. The federal statute as amended in 1981, provides:

> The reduction of benefits required by this section shall not be made if the law or plan described in subsection (a)(2) of this section under which a periodic benefit is payable provides for the reduction thereof when anyone is entitled to benefits under this subchapter on the basis of the wages and self-employment income of an individual entitled to benefits under section 423 of this title, **and such law or plan so provided on February 18, 1981**. (Emphasis added.)

42 U.S.C. § 424a(d) (1981).

At that point, only about one third of the states had already enacted laws reducing workers' compensation benefits on account of the receipt of social security. Thus, in two thirds of the states, such laws are now completely forbidden. In the remaining one third (like Florida), the states may keep such laws as they had on February 18, 1981, but they may not change them. Vol. 9, *Larson's Workers' Compensation Law*, § 157.03(5)(a), p. 157-18 (2000).

Following the 1981 Congressional Amendment, the Social Security A ministration enacted 20 C.F.R. § 404.408(b), providing that the state law involved actually had to have been in effect on February 18, 1981, and that

the federal government would not recognize any change thereafter.

In the present case, § 440.15(1)(f)1, Fla. Stat., cutting off the cost of living adjustment at age 62 on account of the receipt of social security benefits was passed in 1990, nine years later. Ch. 90-201, § 20, Laws of Fla.

Acts of state legislatures which conflict with or interfere with the laws of the United States, violate Article VI, cl. 2, of the U.S. Constitution, commonly called "the Supremacy Clause". *Gibbons v. Ogden*, 9 Wheat. 1, 211, 6 L. Ed. 23 (1824).

The words, "the Laws of the United States" in the Supremacy Clause include the rules and regulations of federal agencies, not just the acts of Congress. *Free v. Bland*, 369 U.S. 663, 8 L. Ed. 2d 180, 82 S. Ct. 1089 (1962); *Texas Employers' Ins. Assoc. v. U. S.*, 569 F. 2d 874 (5th Cir. [Texas] 1978), *cert. denied*, 439 U.S. 826, 58 L. Ed. 2d 119, 99 S. Ct. 98 (1978).

In *Rose v. Arkansas State Police*, 479 U.S. 1, 93 L. Ed. 2d 183, 107 S. Ct. 334 (1986), the Supreme Court of the United States held that a provision in the Arkansas workers' compensation law, which reduced workers' compensation on account of the receipt of a benefit under federal law, violated the Supremacy Clause. The Arkansas Court had decided that the states had power to reduce workers' compensation on account of the receipt of federal benefits and did not need the permission of Congress to do so. However, the Supreme Court of the United States disagreed.

Question Two

On the equal protection question, using the rational basis test, the Supreme Courts of Arkansas, *Golden v. Westark Community College*, 969 S.W. 2d 154 (Ark. 1998); Colorado, *Indus. Claim Appeals Office v. Romero*, 912 P. 2d 62 (Colo. 1996); and West Virginia, *State ex rel. Boan v. Richardson*, 482 S.E. 2d 162 (W. Va. 1996), have specifically held that provisions in their state workers' compensation laws which reduced the payment of workers' compensation for permanent total disability on account of the receipt of social security old age retirement were invalid, as violating the equal protection of the laws' guarantees in their state constitutions, as well as the United States Constitution. Other state courts have viewed the issue differently. *E.g.*, *Harris v. State of Washington, Dept. of Labor*, 842 P. 2d 1056 (Wash. 1993); *McDowell v. Jackson Energy RECC*, 84 S.W. 3rd 71 (Ky. 2002).

CONCLUSION

For these reasons, the petitioner submits that the Supreme Court of the United States should review the decision of the Florida First District Court of Appeal because it held a state statute to be valid when the Supreme Court of the United States has already rendered a contrary decision on the supremacy issue, and the Social Security Act and the Code of Federal Regulations contain specific contrary provisions dealing with the supremacy issue; and the courts of last resort in several of the states

are in severe and vast disagreement as to the correct rule of law on the equal protection issue.

Respectfully submitted,

RICHARD A. SICKING
Florida Bar No. 073747
Counsel of Record for Petitioner
1313 Ponce de Leon Blvd.
Suite 300
Coral Gables, Florida 33134
Tel.: 305-446-3700
Fax: 305-446-4014

APPENDIX TO
PETITION FOR WRIT OF CERTIORARI

APPENDIX
TABLE OF CONTENTS

Page

Opinion Of Florida First District Court Of Appeal....App. 1
Harrell v. Florida Construction, et al., and *Arthur Myers v. City of North Miami, et al.*, 834 So. 2d 352 (Fla. 1st DCA 2003)

Order Of Supreme Court of Florida Denying Review .....App. 11
Harrell, et al. v. Florida Construction Specialists, et al., 851 So. 2d 728 (Fla. 2003)

20 C.F.R. § 404.408(b).....App. 13

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

WINTON HARRELL,

Appellant,

v. CASE NO. 1D01-3512

FLORIDA CONSTRUCTION SPECIALISTS/AARLA/AGENT FOR FWCIGA,

Appellee.

and

ARTHUR MYERS,

Appellant,

v. CASE NO. 1D02-368

CITY OF NORTH MIAMI and INTEGRATED INS. CO.,

Appellees.

_____/

Opinion filed January 8, 2003.

Case No. 01-3512:

An appeal from an order of the Judge of Compensation Claims. John J. Lazzara, Judge.

Arthur C. Beal, Jr., of Arthur C. Beal, Jr., Tallahassee; and Richard A. Sicking of Richard A. Sicking, P.A., Coral Gables, for Appellant.

Mary L. Wakeman of McConnaughhay, Duffy, Coonrod, Pope & Weaver, P.A., Tallahassee, for Appellee.

Case No. 02-368:

An appeal from an order of the Judge of Compensation Claims. Kathryn S. Pecko, Judge.

Richard A. Sicking of Richard A. Sicking, P.A., Coral Gables, for Appellant.

William C. Robinson, Miami, for Appellees.

DAVIS, J.

Appellants/claimants, Arthur Myers and Winton Harrell, appeal orders of the judges of compensation claims holding that because appellants were injured and reached permanent total disability (PTD) prior to age sixty-two, they were not entitled to supplemental benefits after age sixty-five. In this consolidated appeal, appellants also challenge the constitutionality of section 440.15(1)(e)1., Florida Statutes (1991) and 440.15(1)(f)1., Florida Statutes (1995), the authority for the termination of appellants' supplemental benefits, on supremacy clause and equal protection grounds. We affirm for the reasons set forth in this opinion.

Appellants both suffered industrial accidents rendering them permanently and totally disabled before the age of sixty-two. Both appellants collected disability payments and both insurance carriers terminated the payments of supplemental benefits for PTD on the basis of section 440.15(1)(e)1., Florida Statutes (1991) and 440.15(1)(f)1.,

Florida Statutes (1995), respectively.[1] Appellants sought payment of the supplemental benefits for PTD after they reached the age of sixty-five, and the respective judges of compensation claims denied appellants' claims pursuant to this court's opinion in *Wilkins v. Broward County School Board,* 754 So. 2d 50, 52 (Fla. 1st DCA 2000), *rev. den.,* 766 So. 2d 224 (Fla. 2000) (holding that "where a claimant is injured and reaches PTD prior to age 62, the claimant is not entitled to supplemental benefits after age 65."). Appellants initially sought reversal of the JCC's denial of benefits on the grounds that *Wilkins* was not controlling because there was a horizontal conflict between sections 440.15(1)(e)1. and 440.15(10), or that there was a vertical conflict between section 440.15(1)(e)1. and 42 U.S.C. section 424a. Appellants' counsel, however, properly conceded at oral argument that should this court reject the constitutional challenges to the statutes at issue, *Wilkins* does control and *stare decisis* requires this court to affirm the orders.

Appellants contend that section 440.15(1)(e)1., Florida Statutes (1991) and section 440.15(1)(f)1., Florida Statutes (1995), as construed by this court, are in violation of the supremacy clause of the United States Constitution and/or their equal protection rights. The JCCs properly found that they lacked jurisdiction to determine whether the statutes are unconstitutional. *Hensley v. Punta Gorda,* 686

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[1] The language at issue, identical in both versions of the statute, is as follows: "Entitlement to these supplemental payments shall cease at age 62 if the employee is eligible for social security benefits under 42 U.S.C. ss. 402 and 423, whether or not the employee has applied for such benefits." § 440.15(1)(e)1., Fla. Stat. (1991), and § 440.15(1)(f)1., Fla. Stat. (1995).

So. 2d 724, 725 (Fla. 1st DCA 1997) ("As an administrative officer vested with only certain limited quasi-judicial powers, a judge of compensation claims does not have jurisdiction to declare a portion of the Florida Workers' Compensation Act unconstitutional or violative of a federal statute.") (citing *Sasso v. Ram Prop. Mgmt.*, 431 So. 2d 204, 207-208 (Fla. 1st DCA 1983), *approved* 452 So.2d 932 (Fla.1984)); *Bradley v. Hurricane Rest.*, 670 So. 2d 162, 164 (Fla. 1st DCA 1996). Appellants' constitutional challenges to the statutes are, therefore, properly before this court. *Sasso,* 431 So. 2d at 208.

Appellants first contend that the termination of benefits under sections 440.15(1)(e)1., Florida Statutes (1991) and 440.15(1)(f)1., Florida Statutes (1995) is precluded by the Supremacy Clause of the United States Constitution because the statutes are preempted by federal law, specifically, 42 U.S.C. section 424a(d). The Supremacy Clause, found in article VI, clause 2 of the United States Constitution, provides that:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Const. art. VI, cl. 2. "Consequently, Congress has the constitutional power to preempt state law." *United States v. Lot 5, Fox Grove, Alachua County, Fla.*, 23 F.3d 359, 361 (11th Cir. 1994) (citing *Louisiana Pub. Serv. Comm'n v. FCC,* 476 U.S. 355, 368 (1986)).

Prior to 1981, the Social Security Act contained a provision for the coordination of workers' compensation disability benefits with social security disability benefits by providing that the combination of the two benefits could not exceed 80% of a claimant's average current earnings. If the benefits exceeded the 80% cap, the social security benefits would be offset to the 80% level. 42 U.S.C. § 424a(a) (1976). This coordination of benefits, however, contained an exception which allowed the states to choose their own method of coordinating both workers' compensation and social security benefits. That coordination of benefits has become known as a "reverse offset," and it enables states to reduce the amount of workers' compensation payments by making social security benefits payable before the workers' compensation benefits. Florida was among the states which exercised the option to reverse the federal offset by enacting section 440.15(10), Florida Statutes (1980). Under section 440.15(10), the combination of workers' compensation benefits and social security benefits could not exceed 80% of an employee's average weekly wage. The social security benefit is paid first, and the "offset," if any, inures to the benefit of the employer/carrier at the 80% level. The offset ceases at age sixty-two.

In 1981, Congress amended 42 U.S.C. section 424a, as found in the Omnibus Budget Reconciliation Act of 1981. Congress changed the age during which the reduction of social security benefits could be made on account of the receipt of workers' compensation benefits from age sixty-two to age sixty-five. Congress also added the following language to 42 U.S.C. section 424a:

(d) Exception

> The reduction of benefits required by this section shall not be made if the law or plan described in subsection (a)(2) of this section under which a periodic benefit is payable provides for the reduction thereof when anyone is entitled to benefits under this subchapter on the basis of the wages and self-employment income of an individual entitled to benefits under section 423 of this title, and such law or plan so provided on February 18, 1981.

Through this amendment, Congress abolished the reverse offset for those states that had not already enacted laws for such an offset. The states, including Florida, that had already enacted reverse offset provisions were "grandfathered" in and allowed to continue to apply reverse offsets, i.e., reduce workers' compensation benefits on account of the receipt of social security benefits.

Appellants challenge the validity of section 440.15(1)(e)1. which was first enacted in 1990 and provides for the cessation of the supplemental benefits for PTD upon an employee's sixty-second birthday. Appellants argue that the statute operates as a reverse offset under section 440.15(10) because it reduces the workers' compensation benefits on account of the receipt of social security benefits, and that Florida cannot reduce such benefits unless the offset was a law in 1981. We hold that the termination of supplemental benefits pursuant to 440.15(1)(e)1., Florida Statutes (1991) and section 440.15(1)(f)1., Florida Statutes (1995) is not a reverse offset pursuant to section 440.15(10), and therefore, is not in conflict with 42 U.S.C. 424. Based on the analysis that

follows, we find that the statutory provisions are also not preempted by 42 U.S.C. section 424a(d).

Congress's constitutional power to preempt state law is not unlimited. "A federal statute does not supersede state law unless that is the clear and whole purpose of Congress." *Lot 5,* 23 F.3d at 361 (citing *Cipollone v. Liggett Group, Inc.,* 505 U.S. 504 (1992)). In *Cipollone,* the United States Supreme Court recognized that consideration of issues arising under the Supremacy Clause begins with the "assumption that the historic police powers of the States [are] not to be superseded by . . . Federal Act unless that [is] the clear and manifest purpose of Congress." 505 U.S. at 516 (quoting *Rice v. Santa Fe Elevator Corp.,* 331 U.S. 218, 230 (1947)). "Accordingly, the purpose of Congress is the ultimate touchstone of pre-emption analysis." *Id.* (citations and internal quotations omitted).

The intent of Congress may be "explicitly stated in the statute's language or implicitly contained in its structure and purpose." *Id.* (citation and internal quotations omitted). Further, in the absence of an express command by Congress, state law will be pre-empted if the law "actually conflicts with federal law (citation omitted) or if federal law so thoroughly occupies a legislative field as to make reasonable the inference that Congress left no room for the States to supplement it." *Id.* (citations and internal quotations omitted).

In *State v. Stepansky,* 761 So. 2d 1027 (Fla. 2000), the Florida Supreme Court noted several ways in which federal law can preempt state law. First, if the scheme of federal regulation is so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it; second, if the federal legislation touches a

field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject; or third, the "object sought" by the federal legislation may reveal the same purpose. *Id.* at 1033-1034 (citations omitted). The exception created by Congress in 42 U.S.C. 424a(d) is not so pervasive as to require this court to infer that Congress intended to preclude the State of Florida from ever terminating benefits such as those terminated by 440.15(1)(e)1., Florida Statutes (1991) and section 440.15(1)(f)1., Florida Statutes (1995), and not offset by section 440.15(10). To the contrary, it seems clear that the purpose of 42 U.S.C. section 424a(d) was to avoid a double offset by allowing the states to shift costs to the federal government through a reverse offset program. *Harris v. State of Washington,* 843 P.2d 1056, 1060 (Wa. 1993) (citing *Sciarotta v. Bowen,* 837 F.2d 135, 140 (3d Cir. 1988) (quoting *Swain v. Schweiker,* 676 F.2d 543 (11th Cir.), *cert. denied,* 459 U.S. 991 (1982)).

In *Harris,* the Supreme Court of Washington rejected a similar challenge after a thorough analysis of the issue. The argument advanced in *Harris* is similar to the one made before this court, i.e., that 42 U.S.C. section 424a(d) is evidence of congressional intent to preempt state reverse offsets of federal benefits. As found in *Harris,* 42 U.S.C. section 424a not only fails to express an intent to occupy the field of coordinating benefits, it "provides for some types of state reverse offsets, thus indicating a Congressional interest in *sharing* the field of benefit coordination." *Id.* at 1061 (emphasis supplied).

We find no inconsistency between the Florida statutes and the purposes and objectives of the federal law, 42 U.S.C. section 424a, which explicitly coordinates benefits

to avoid duplication. The Florida statutes, by avoiding duplicative benefits, are consistent with federal law. We hold that 42 U.S.C. section 424a does not preempt sections 440.15(1)(e)1., Florida Statutes (1991) and 440.15(1)(f)1., Florida Statutes (1995).

Appellants alternatively argue that the cessation of the cost of living supplements for PTD, under sections 440.15(1)(e)1., Florida Statutes (1991) and 440.15(1)(f)1., Florida Statutes (1995), violates the constitutional guarantees of equal protection of the law. The equal protection clauses of the state and federal constitutions guarantee that all citizens similarly situated be treated alike. Art. I, § 2, Fla. Const.; U.S. Const. amend. XIV, § 1. Because appellants' challenge is based on age discrimination, it is subject to the rational basis review.[2]

We find that the termination of PTD supplemental benefits at the age of sixty-two, pursuant to sections 440.15(1)(e)1., Florida Statutes (1991) and 440.15(1)(f)1., Florida Statutes (1995), survives the rational basis test because it is reasonably related to a permissible government objective. In *Wilkins,* this court noted that the legislature "could have legitimately assumed that in these

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[2] Initially, we note that age is not a suspect class. *State v. T.M.,* 761 So. 2d 1140, 1145-1146 (Fla. 2nd DCA 2000) (citing *Gregory v. Ashcroft,* 501 U.S. 452, 470 (1991)); *State v. Walborn,* 729 So. 2d 504, 505 (Fla. 2nd DCA 1999); *Sasso v. Ram Property Management,* 431 So. 2d 204 (Fla. 1st DCA 1983) (noting that "age has not as yet, for federal equal protection purposes, been determined either a suspect or quasi/suspect class."). "Age limitations and restrictions may survive a constitutional challenge and be enforced if they pass the 'rational basis' test, i.e., the age classifications are reasonably related to a permissible governmental objective." *Wright v. State,* 739 So. 2d 1230, 1232 (Fla. 1st DCA 1999).

cases [where a claimant is injured and reaches PTD prior to age 62] a claimant would not continue to work after a traditional retirement age." 754 So. 2d at 52. Further, the *Final Staff Analysis and Economic Impact Statement* for the original enactment of the statutory language at issue in section 440.15(1)(e)1. states that the objective of the statute was to lower the premium costs for workers' compensation coverage. Fla. H.R. Comm. on Commerce, CS/HB 3809 and CS/HBs 2671, 1099, 1499, 1611, 2265, 2871, 2957, 3007, and 3135 (1990) Staff Analysis (final July 18, 1990) ("The bill revises the Workers' Compensation law in order to address the rising costs of worker's compensation insurance in the state. Though some reduction in benefit levels was necessary to bring about the desired reduction in costs, benefit levels were cut only as a last resort."). The goal of reducing the costs of premiums is not, "under the rational basis test, an illegitimate or irrelevant consideration." *Sasso,* 431 So. 2d at 220. Appellants have failed to meet their burden in establishing that there is no legitimate state purpose furthered by the termination of PTD supplemental benefits provision. We hold that the legislature's statutory objective satisfies the rational basis test and that sections 440.15(1)(e)1., Florida Statutes (1991) and 440.15(1)(f)1., Florida Statutes (1995) do not violate equal protection.

Accordingly, we find that *Wilkins* controls because both claimants herein were injured and reached PTD prior to age sixty-two, and they are, therefore, not entitled to supplemental benefits after age sixty-five; we further find the constitutional challenges lacking in merit; and we affirm the orders on appeal.

BENTON and POLSTON, JJ., CONCUR.

Supreme Court of Florida

WEDNESDAY, JULY 16, 2003

CASE NO.: SC03-198
Lower Tribunal Nos.:
1D02-368, 1DO1-3512

WINTON HARRELL, ET AL.	vs.	FLORIDA CONSTRUCTION SPECIALISTS, ET AL.
Petitioner(s)		Respondent(s)

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the court having determined that it should decline to accept jurisdiction, it is ordered that the Petition for Review is denied.

No Motion for Rehearing will be entertained by the Court. *See* Fla. R. App. P. 9.330(d).

WELLS, PARIENTE, QUINCE, CANTERO and BELL, JJ., concur ANSTEAD, C.J., and LEWIS J., dissent.

Petitioners' Motion for Attorney's Fees is hereby denied.

ANSTEAD, C.J., and WELLS, PARIENTE, QUINCE, CANTERO and BELL, JJ., concur

LEWIS, J., dissents.

A True Copy
Test:
/s/ Thomas D. Hall
Thomas D. Hall [SEAL]
Clerk, Supreme Court
bh
Served:
HON. JON S. WHEELER, CLERK
ARTHUR C. BEAL, JR.
RICHARD A. SICKING
WILLIAM C. ROBINSON
MARY LALLEY WAKEMAN
HON. KATHRYN S. PECKO, JUDGE
HON. JOHN J. LAZZARA, JUDGE

20 C.F.R. § 404.408(b) provides:

> (2) The reduction of a benefit otherwise required by paragraph (a)(2) of this section is not to be made if:
>
> (i) The law or plan under which the periodic public disability benefit is payable provides for the reduction of that benefit when anyone is entitled to a benefit under title II of the Act on the basis of the earnings record of an individual entitled to a disability insurance benefit under section 223 of the Act and that law or plan so provided on February 18, 1981. (The reduction required by paragraph (a)(2) of this section will not be affected by public disability reduction provisions not actually in effect on this date or by changes made after February 18, 1981, to provisions that were in effect on this date providing for the reduction of benefits previously not subject to a reduction);